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October 25, 2017

Mark Neary, Clerk
Supreme Court of New Jersey
P.O. Box 970
Trenton, New Jersey 08625-0962

Re: **In the Matter of Craig R. Mitnick**
Docket No. DRB 17-310
District Docket No. XIV-2015-0505E

Dear Mr. Neary:

The Disciplinary Review Board reviewed the motion for discipline by consent (reprimand or such lesser discipline as the Board may deem appropriate) filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-10(b). Following a review of the record, the Board determined to grant the motion. In the Board's view, a reprimand is the appropriate measure of discipline for respondent's violations of RPC 1.15(a) (negligent misappropriation and commingling) and RPC 1.15(d) and R. 1:21-6 (recordkeeping violations).

During the relevant time period, respondent maintained the following bank accounts in connection with his law practice: at Republic Bank, an attorney trust account (ATA1) and attorney business account (ABA1); at BB&T Bank (formerly Susquehanna Bank), an attorney trust account (ATA2), and at Wells Fargo Bank, an attorney business account (ABA2).

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On October 28, 2015, respondent's ATA1 at Republic Bank incurred an overdraft of \$7,776.95, prompting an OAE investigation.

In June 2015, respondent represented Barbara Hacker in connection with a personal injury claim. The matter settled and, on June 5, 2015, respondent deposited the settlement proceeds of \$57,500 into ATA2. Thereafter, in three separate transactions in June 2015, he disbursed trust account checks for his fees and costs totaling \$18,408.21, leaving a \$39,091.79 balance on account of the Hacker matter.

On July 6, 2015, in preparation for closing ATA2, respondent wrote ATA2 check number 1153, payable to himself, for \$44,398.84, the total amount held in the account for all clients. That balance represented Hacker's \$39,091.79, as well as funds for several other clients.

Respondent took ATA2 check number 1153 to Susquehanna Bank to obtain a bank check in that same amount, apparently in order to zero out the account before closing it. Although he requested a bank check for \$44,398.84, he was given one for \$34,398.84. Upon discovering the error, rather than void the bank check, the bank teller issued a second bank check for an additional \$10,000, for a total of \$44,398.84.¹

Thereafter, respondent deposited the \$34,398.84 check into the new trust account at Republic Bank, ATA1. Intending to deposit the \$10,000 bank check into ATA1 as well, he inadvertently deposited it into the new business account at Republic Bank, ABA1, mistaking it for a contemporaneous, June 29, 2015 personal check from respondent's parents, who had loaned him \$10,000, funds which he had intended to deposit into the ABA1.

As of July 20, 2015, respondent had used the entire \$10,000 of client funds for law firm expenses.

On October 20, 2015, in the Hacker matter, respondent issued ATA1 check number 140115 for \$19,092.79 to satisfy a lien, and a \$20,000 check number 140116 to Hacker for her share of the

¹ The \$10,000 bank check bore check number 110980951, and was issued prior to the \$34,398.84 bank check, which bore check number 110980952. The stipulation acknowledged that apparent inconsistency, but did not fault respondent for it.

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settlement proceeds, the latter causing the overdraft in the trust account.²

By depositing \$10,000 of client trust funds into ABA1, and then using those funds for law firm expenses, respondent admittedly invaded other client funds held in ATA1, causing a \$10,000 negligent misappropriation.

Because respondent did not conduct required monthly reconciliations of his trust account, he did not immediately discover and correct his error. On October 29, 2015, the day after the overdraft occurred, he deposited \$20,000 of his own funds into the trust account to correct the \$10,000 shortage. However, he left the additional \$10,000 of personal funds in ATA1 for the next four months, until February 16, 2016, thereby commingling personal funds in the trust account.

In a second matter, respondent settled a claim for Richard Nash sometime prior to July 22, 2015. On that date, respondent deposited \$55,000 in settlement proceeds into ATA1 on account of the Nash matter. However, the previous day, July 21, 2015, respondent had negotiated ATA1 check number 140105, payable to himself for \$15,219.71 for fees in the case, and ATA1 check number 140104, also payable to himself for \$1,420.43, representing costs.

On July 21, 2015, respondent was required to have in ATA1 \$64,429.02 on account of several clients. By negotiating these two trust account checks to himself, respondent allowed the balance in the trust account to fall to \$37,788.88, thereby causing another negligent misappropriation of clients' funds held in the trust account.³

The OAE investigation also revealed several recordkeeping deficiencies. Respondent (1) failed to prepare and maintain

² Although the stipulation provides that the Hacker funds totaled \$39,091.79, respondent disbursed \$39,092.79 in that matter: \$19,092.79 for the lien, and \$20,000 to Hacker.

³ The stipulation does not state the basis upon which the parties concluded that respondent's "early" use of the trust account funds was unintentional in nature. Presumably, the OAE's audit did not support the conclusion that respondent had knowingly misappropriated client funds when he took his fees and costs before depositing the corresponding settlement funds in the trust account.

monthly three-way reconciliations of the trust account; (2) failed to maintain client ledger cards; (3) failed to prepare a client ledger card for personal funds for trust account bank charges; (4) commingled personal funds in the trust account; (5) used improper attorney trust and business account designations; and (6) failed to maintain trust account receipts and disbursements journals.

Respondent stipulated that he negligently misappropriated client funds in connection with the Hacker and Nash matters, and commingled personal funds in the trust account, in violation of RPC 1.15(a). In addition, he failed to comply with the attorney recordkeeping requirements of R. 1:21-6, a violation of RPC 1.15(d).

In mitigation, the parties cited respondent's lack of prior discipline since his 1982 admission to the bar, and the absence of any aggravating factors.

Generally, a reprimand is imposed for recordkeeping deficiencies and negligent misappropriation of client funds. See, e.g., In re Cameron, 221 N.J. 238 (2015) (after the attorney had deposited into his trust account \$8,000 for the payoff of a second mortgage on a property that his two clients intended to purchase, he disbursed \$3,500, representing legal fees that the clients owed him for prior matters, leaving in his trust account \$4,500 for the clients, in addition to \$4,406.77 belonging to other clients; when the transaction fell through, the attorney, who had forgotten about the \$3,500 disbursement, issued an \$8,000 refund to one of the clients, thereby invading other clients' funds, a violation of RPC 1.15(a); upon learning of the overpayment, the attorney collected \$3,500 from one of the clients and replenished his trust account; a demand audit of the attorney's books and records uncovered "various recordkeeping deficiencies," a violation of RPC 1.15(d)); In re Wecht, 217 N.J. 619 (2014) (attorney's inadequate records caused him to negligently misappropriate trust funds, violations of RPC 1.15(a) and RPC 1.15(d)); and In re Gleason, 206 N.J. 139 (2011) (attorney negligently misappropriated clients' funds by disbursing more than he had collected in five real estate transactions in which he represented a client; the excess disbursements, which were the result of the attorney's poor recordkeeping practices, were solely for the benefit of the client; the attorney also failed to memorialize the basis or rate of his fee).

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As in the above-cited cases, respondent, too, negligently misappropriated client funds as a result of poor recordkeeping. Under the circumstances, and in light of respondent's clear disciplinary history since his admission to the bar thirty-five years ago, the Board determined that a reprimand is the appropriate measure of discipline.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated August 24, 2017.
2. Stipulation of discipline by consent, dated August 23, 2017.
3. Affidavit of consent, dated August 7, 2017.
4. Ethics history, dated October 25, 2017.

Very truly yours,



Ellen A. Brodsky
Chief Counsel

EAB/paa

c: w/o enclosures

Bonnie C. Frost, Chair

Disciplinary Review Board (via e-mail)

Charles Centinaro, Director

Office of Attorney Ethics (via e-mail and interoffice mail)

Reid A. Adler, Deputy Ethics Counsel

Office of Attorney Ethics (via e-mail)

Robert E. Ramsey, Esq., Respondent's Counsel

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